IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1032 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-
and
HON'BLE MR.JUSTICE J.R.VORA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
BHARATSINH ATUBHA JADEJA

Appearance:
1. Criminal Appeal No. 1032 of 1986
MR PRACHCHHAK, A.P.P. for Petitioner No. 1
MR KB ANANDJIWALA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 22/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The Appellant - State of Gujarat has filed this Appeal against the impugned Judgment and order of acquittal dated 9.12.1985, passed by the learned Addl. Sessions Judge, Gondal, acquitting the respondent accused Bharatsing Atubhai Jadeja for the offence u/s. 302 I.P.Code.

This Appeal was placed for admission before the Division Bench of this Court (Coram : M.B.Shah & B.S. Kapadia, JJ.)(as Their Lordships then were). Thereafter, it was placed for final disposal before the Division Bench of this Court (Coram : D.K.Trivedi & D.P.Buch, JJ.) on 17.1.2004. However, Hon'ble Mr.Justice D.P.Buch made an exception of hearing of this Appeal and, therefore, this Appeal was placed yesterday before this Court. Yesterday it could not be taken up because this Court was busy in other case and learned Counsel Shri Anandjiwala for the respondent - accused also wanted some time to fully prepared himself in the matter, therefore, it was kept today.

2. Brief facts of the case are as under :

Deceased Ramesh Jethwa was suspended SRP Constable of SRP Group-8. Everyday he was supposed to mark his presence in Roll-call at about 8.00 p.m. Accused Bharatsinh was serving in SRP Group-3. On the date of incident after marking the presence Ramesh Jethwa and others left SRP Camp. At about 8.30 p.m. the deceased Ramesh Tribhovan Jethwa came to the Roll-call ground and raised shouts "help, help". One man was chasing him with knife. For catching hold of that man. R.P.Makhubha and Ranjitsinh chased him and he was caught with blood stained knife in his hand. It is the prosecution case that that man was the present respondent-accused. Ramesh Jethwa uttered the words that he had been assaulted by Bharatsinh. As per the direction given by the Officer, Ranjitsinh and Makhubha produced Bharatsinh at the Police Station. Thereafter, the FIR of Ranjitsinh Jadeja was recorded. Bharatsinh was produced at the police station with knife. Thereafter, the Police started investigation after registering the offence and recorded the statements of various persons. After completing the investigation, police submitted charge-sheet. As the case was exclusively triable by the Court of Sessions, it was

committed to the Court of Sessions. The charge was framed against the accused for the offence u/s.302 I.P.C.

3. The charge Ex.1 was framed against the accused to which he pleaded not guilty and claimed to be tried. Therefore, the prosecution examined as many as 20 witnesses, 2 of them, (i) Jayantilal Vitthal Teraiya, P.W.1, Ex.17, and (ii) Pravinkumar Shamjibhai, P.W.16, Ex.46, were eye witnesses, but both of them have turned hostile. Thus, therefore, practically there was no direct evidence against the accused. Considering the evidence of the prosecution witnesses the learned Judge by his impugned Judgment and order dated 9.12.1985 came to the conclusion that the prosecution failed to prove its charge against the accused beyond reasonable doubt, therefore, by giving benefit of doubt to the accused the respondent accused was acquitted for committing murder of deceased Ramesh Jethwa on 11.1.1985 at 8.30 p.m. The same is challenged by the State in this acquittal Appeal.

4. Learned A.P.P. Shri Prachchhak has taken us through the evidence of the prosecution witnesses as well as reasons assigned by the learned Judge for acquitting the respondent - accused, more particularly at running Page : 141, 142, 143, 144 of the Paper Book. Apart from that the learned Judge also considered the delay in lodging the F.I.R. at running Page : 145. At running page 146 of the Paper Book the learned Judge observed that the prosecution failed to prove the origin of the incident and an attempt was made to introduce the story regarding the origin of the incident after recording further statement of Ranjitsinh. Regarding money transaction the learned Judge clearly observed that there was nothing on record to show that who gave money, to whom and how much amount was paid. He has also came to the conclusion that the prosecution also failed to prove as to whether debtor has refused to pay the amount to the creditor or not and what talk transpires about it, as there was no evidence to that effect. The learned Judge has carefully considered the medical evidence at page:148. An attempt was made by the prosecution to rely upon the show called Dying Declaration of the deceased alleged to have been made before Ranjitsinh, but according to the evidence of Dr.Madhusudan Kalyanji, who examined and treated deceased Ramesh first in point of time and, thereafter, by Dr.Mehta, who performed the Post Mortem, the deceased would not be in a position to speak soon after occurrence. In that view of the matter the learned Judge has rightly not placed any reliance to the so called dying declaration stated to have been made by deceased Ramesh. The learned Judge at running Page:152

of the Paper Book also observed that in the F.I.R. there was no reference whatsoever about so called dying declaration made by the deceased in presence of others. Likewise the learned Judge has considered the evidence of other witnesses on the point of so called dying declaration and considering the evidence of Jorubha Ex.141 he came to the conclusion that evidence of Jorubha completely destroy the evidence of Ranjitsinh, who claimed that so called dying declaration was made by the deceased as he had not uttered any word about the so called dying declaration. In Para : 53 of his Judgment the learned Judge has observed that Ranjitsinh and Chandubha stating about the so called dying declaration made by deceased Ramesh whereas other witnesses Bhanubhai, Chhatrasinh and Jilubha have not at all stated about any such dying declaration made by deceased Ramesh.

In Para : 55 of his judgment the learned Judge observed that as per the prosecution case injured Ramesh came running into SRP line chased by accused Bharatsinh with knife. In that case it cannot be inferred that accused would have inflicted blow with knife when no blood stained marks were found on the clothes put on by him. There was no evidence on record to show that why the accused Bharatsinh was chasing deceased Ramesh. About so called recovery of Muddamal knife the learned Judge observed that panchas have not supported the prosecution case about so called recovery of knife at the instance of accused and the Investigating Officer has not stated in his evidence at Ex.58 that there were any blood stain marks on the muddamal knife. Panchnama Ex.59 shows that there was some blood found on the handle of knife but, neither Investigating Officer nor the Panch deposed in their evidence that the knife was having blood stains on it.

5. The learned Judge considered the station diary Ex.53 in which there was mention about "Mara mari" taking between two SRP men and Ramesh was brought for treatment and referred to the Hospital. The accused had also received some injuries which was not properly explained, therefore, the learned Judge gave benefit of doubt to him. He has also taken into consideration the probability of right of private defence as an alternative argument advanced on behalf of the learned Advocate of the accused.

6. Lastly, the learned Judge, in Para : 64 of his judgment, running page : 164 of the Paper Book, considering the fact that the history of assault by some one before few minutes of the incident was mentioned in

case papers Ex.25, three persons, namely, (1) Vitthal, (2) Jilubha and (3) Chandrasinh took deceased Ramesh to the hospital. If they had really witnessed the incident then they would have definitely disclosed the name of accused Bharatsinh as assailant while giving history, but that was not so.

7. Considering the aforesaid reasons assigned by the learned Judge, we are of the considered opinion that no interference is called for with the impugned Judgment and order of acquittal in this Appeal.

Accordingly, this Appeal fail and is hereby dismissed.

sd/-

(B.J.Shethna, J.)

Date : January 22, 2004 sd/-

(J. R. Vora, J.)

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